

(1958) 08 MAD CK 0013

In the Madras High Court

Case No : Civil Revision Petition No. 26 of 1957

Sri Sivagurunathaswami Devasthanam

APPELLANT

Vs

Sri S.A. Rathina Padayachi

RESPONDENT

Date of Decision : 05-08-1958

Acts Referred:

Madras Estates Land Act, 1908 — Section 3(16)

Citation : (1959) ILR (Mad) 172

Hon'ble Judges : Ramachandra Ayyar, J

Bench : Single Bench

Advocate : K.S. Naidu and P. Devadas, for the Appellant; D. Ramaswami Ayyangar and P.R. Varadarajan, for the Respondent

Final Decision : Allowed

Judgement

Ramachandra Ayyar, J.—The Plaintiff is the Petitioner in this civil revision petition which challenges the order of the lower Court returning

the plaint for presentation to the proper Court. The Plaintiff filed a suit for recovery of possession of some padugai lands of an extent of seven

mahs situate in the whole inam village of Sivapuram in Tanjore district. The suit property was originally leased out by the Petitioner to one

Sarangapani Iyengar, who raised plantain crops and sold the trees to the Respondent. A suit was filed for recovery of possession from

Sarangapani. The Respondent herein was impleaded in that suit as the second Defendant. The former remained ex parte but the latter raised a

contention that the land was ryoti land and that he had acquired occupancy rights therein. That litigation came up to this Court and the decision of

this Court is reported in Sivapuram Sri Sivagurunathaswami Koil and Another Vs. Sarangapani Ayyangar and Another, . this Court held that the

second Defendant was only a purchaser of the crops on the land and could not claim any right to the land itself and directed the lower Court to re-entertain the plaint and dispose of the matter. A decree followed against the (second Defendant to that suit), viz., Respondent. Possession was delivered by the present Respondent on 24th April 1946. Curiously enough, in or about three weeks thereafter, the then trustee of the Petitioner devasthanam purported to grant an oral lease of the very same land to the Respondent on 14th May 1946. No comment is necessary as to how well this trustee served the institution by that act and the learned Subordinate Judge has put it rather mildly when he says that the trustee did not act in the best interests of the trust in leasing out the property again to the Respondent. The Respondent, however, acted in the way in which he could be expected to do. He defaulted in payment of rent and would not deliver possession of the land to the lessor on the expiry of the lease. The Petitioner thereupon filed the present suit for recovery of possession with past and future mesne profits. The old defence was again set up. The Respondent stated that the property was situate in a whole inam village which is an estate within the meaning of the Estates Land Act (I of 1908), that the property leased out to him was ryoti land and that he had acquired occupancy rights therein by reason of the oral lease which the erring trustee granted in his favour. The learned District Munsif held that the land is situate in an estate within the meaning of the Madras Estates Land Act and that the land being padugai should be held to be ryoti land and that, therefore the civil Court had no jurisdiction to entertain the suit. The learned District Munsif, however, gave findings on other issues in the case which, but for his finding on the question of jurisdiction, would have meant a decree in favour of the Plaintiff. In the result, the plaint was returned for presentation to the proper Court. The Plaintiff took up the matter in appeal. The learned Subordinate Judge who heard the appeal agreed with the learned District Munsif, and dismissed the appeal. The Plaintiff has come forward with this civil revision petition.

2. There is no doubt that the land is what is familiarly known in the districts of Tiruchirappalli and Tanjore as padugai land. Padugai lands mean lands on the lower level bank breadth of the river between the edge of the sandy stream bed and the high flood level bank. The river Cauvery rises

from Coorg mountains, flows through the districts of Salem, Coimbatore, Tiruchirappalli and Tanjore. The river splits itself into numerous branches and covers the whole of the Tanjore delta. One of such rivers retains the name of Cauvery. On either side of the rivers, there are high banks generally called high level banks. Normally the water runs between the high level banks on either side. In some seasons of the year the river brings with it rich alluvial mud. As there are no rocks on the river bed in the Tanjore district and in some portions of the Tiruchirappalli district, the current of the river is not torrential and it sometimes happens that by the side of the high flood level bank as the water passes, the silt gets deposited adjacent to the flood level bank. In course of time, this deposit forms into land adjacent to the high flood level bank and thus forms into what is styled as a low flood level bank. The formation of such lands makes the water in the river run beyond them, that is over the sandy bed. These lands formed as they are by the gradual deposit of the alluvial mud gets hardened by being exposed to the sun and are really accretions to the bund. It may so happen that in certain seasons when the river is in floods, these lands get submerged under water. As stated in the Tanjore Gazetteer, at page 100,

the class of dry land not found in many districts is padugai or the strip of land between the beds of the river and the embankments built to prevent them from overflowing. These are annually submerged for some days by silt-laden water and are consequently very fertile. Plantains are generally grown on them and more rarely tobacco and bamboos,

3. It may be noticed from the above description of padugai lands that they are mere accretions to the bund of the river. In *Secretary of State v. Raghunatha Tathachariar* ILR (1912) 38 Mad. 108, the question arose whether as between the Government and the inamdar the padugai land belonged to the inamdar. The learned Judges held that these lands could not be treated as part of the river bed so as to vest its title in the Government. In that case it was not necessary to decide whether those lands were ryoti lands or not. In Section 3(16) of the Estates Land Act (I of 1908), ryoti land is defined as cultivable land in an estate other than private land but does not include beds and bunds of tanks and of supply drainage, surplus irrigation channels.

If padugai lands formed part of the river bund the river being admittedly an irrigation channel for the district, it would not be ryoti land. In

Sivapuram Sri Sivagurunathaswami Koil and Another Vs. Sarangapani Ayyangar and Another, , CHANDRASEKARA AYYAR J., held that

even though padugai land may not be part of the river bed it may be part of the river bank in which case also as in the case of river bed lands it

would not come within the definition of ryoti land.

4. The learned Subordinate Judge has declined to follow this observation of the learned Judge though that decision was given between the same

parties as in the present litigation, on the ground that it is mere obiter dicta. As stated earlier the decision in Secretary of State v. Raghunatha

Tathachariar (1945) 2 M.L.J. 380, did not decide the question as to whether padugai land was ryoti land or not. The only decision available is that

of the Sivapuram Sri Sivagurunathaswami Koil and Another Vs. Sarangapani Ayyangar and Another, where CHANDRASEKARA AYYAR J.,

made the observation already referred to and which the learned Subordinate Judge did not follow. The learned Subordinate Judge should have

followed this obiter dicta particularly when there is no other decision on the subject. I respectfully follow the observations of

CHANDRASEKARA AYYAR J., as stating the law on the subject. As stated already padugai land is formed by the formation of the aluvial

deposit on the river bed and which very often gets submerged when the river is in floods. It cannot, therefore, be taken as ryoti land. By way of

analogy, reference may be made to the tank bed lands which though cultivated are never held to be ryoti lands. It is true that in a number of villages

padugai lands are treated as ryoti lands but that is by reason of custom or prescription. The tenant would have no occupancy rights in respect of

such lands except where he has acquired such rights by reason of custom, grant or prescription. But those considerations would not apply to lands

in the present case as the Defendant was holding the land under a terminable lease for one year. I am, therefore, of the opinion that the lower

Courts went wrong in holding that the suit lands are ryoti lands. The suit is maintainable in a civil Court as the tenancy is a terminable one. The civil

revision petition, is, therefore, allowed and the matter is remanded to the trial Court to pass a decree against the Defendant. The Petitioner will be

entitled to his costs throughout.